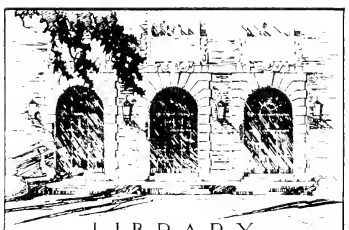

CONVOCATION OF CANTERBURY, LOWER HOUSE.

REPORT OF THE COMMITTEE ON CHURCH OF ENGLAND EDUCATIONAL ENDOWMENTS.

The Committee* appointed Feb. 12th, 1872, by direction of the Upper House, "to report upon recent legislation on the subject of Education, with special reference to the Endowed Schools Act, as it affects the securities hitherto given by Endowments for the religious instruction of members of the Church," report as follows:—

They have addressed themselves for the present exclusively to the subject specially assigned to them of Church of England School Endowments as affected by the Endowed Schools Act of 1869, and to the action of the Commissioners appointed under that Act.

They have had before them the Act itself, the Report of the original Commission on which the Act is based, the information given by many managers and trustees of Church School Endowments in reply to queries issued by themselves, and also the Report of the Commissioners, issued April, 1872. The last document is one of the greatest value with reference to the subject assigned to the Committee. It is the more valuable, because by its means it will be in the power of the Committee to describe many portions of the Act in the words of the Commissioners themselves.

The Committee propose—

1. To give an account of the Act with special reference to its bearing upon the religious instruction of members of the Church of England.
2. To remark upon the action and practice of the Commissioners under such provisions.
3. To offer such recommendations as seem of importance

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*The Prolocutor.
Dean of Rochester.
Archdeacon of Gloucester.
„ Stowe.
„ Colchester.
„ Berks.
„ Leicester.
„ St. David's.
„ Ely.
Dr. Leighton.
Canon Gregory.
„ Hopkins.
Canon How.
„ Randall.
„ Seymour.
Mr. Fagan (*Chairman*).
„ Horner.
„ Kempe.
„ Sanders.
„ Barlow.
„ Campion.
„ Sumner.
„ De Winton.

with reference to the action of the House and of the Church at large, in defence of the provisions hitherto legally secured for the religious instruction of members of the Church, under the dangers with which such securities appear to be more or less threatened.

But, before proceeding to the main subject, the Committee think it well to observe that there are two leading features of the Act, or rather of the action of the Commissioners thereupon, which are closely connected with the religious question, and with the duties and responsibilities of the Clergy and other Church trustees of those charities.

Both are derived from the absolute powers given under the Act to the Commissioners wholly to set aside existing trusts and constitutions, and "to alter and add to any existing, and to make new "trusts, directions, and provisions" by any "schemes which they "may deem suited" for "putting a liberal education within the "reach of children of all classes."

The first of these features is—the practical application of many of these Endowments to the advantage of the children of the middle classes, instead of the poor who have hitherto enjoyed them, and were intended by their founders to do so.

The second is—the abolition to a very wide extent of local and parochial privileges, so as to uproot those special benefits to the inhabitants of the upper as well as poorer classes of a given parish or neighbourhood, which undoubtedly formed the main inducement in the minds of the original founders to bequeath such charities at all.

Upon these two points the Committee think it right to remark that it behoves Church Trustees, and more especially the Clergy, to be very vigilant respecting all attempts to transfer to a different section of society those endowments which are the heritage of the "poor," or of the "middle poor," as the case may be. This remark applies also to the case of "temporal" charities, which, under Clause 30 of the Act, can only be applied by the Commissioners to Educational purposes with consent of the existing governing bodies.

On the other hand, they are alive to the necessity of remedying the abuses which may have gathered round the administration of some of our old endowed charities, and of rendering them as available for the requirements of a modern generation as may be consistently with the sacred obligations of Trusts, often held specially in behalf of God's poor.

The Committee are not prepared, and they believe that both the Clergy and the people of England at large are not prepared, to adopt the principle that the intentions and objects of God-fearing and benevolent founders are to be set aside, if not wholly ignored.

To the Committee there seem to be only two courses worthy of a Christian nation or of a civilised legislature, either to respect the religious and even the innocent intentions of founders and benefac-

tors, and not to alienate them to objects from which they would, if now alive, be more or less averse; or else, if such intentions are supposed to work injuriously to the present generation, then to seek out the nearest objects of a kindred nature to which such endowments can be usefully directed.

I. *Provisions of the Act affecting Religion.*

The Committee now proceed to consider the provisions of the Act, so far as, either negatively or positively, they affect religious instruction in our Educational Endowments. These provisions ought to be carefully studied, as also the action of the Commissioners, in connection with the Report of Her Majesty's Commissioners on Endowed Schools, appointed in 1864; to which Report and its recommendations express reference is made in the Endowed Schools Act.

The Preamble itself of the Bill, which prescribes for its scope the object of "promoting the greater efficiency" of "Educational "Endowments," and of carrying "into effect the main designs of "the founders thereof, by putting a liberal education within the "reach of all classes," appears to be painfully defective in a religious point of view. It is a matter of plain fact that the Christian education of children was the main object of the founders of our Educational Endowments, and that, even in cases in which this object was not specified, the law of the land was such, that all founders left their endowments with the full knowledge that religion must be taught, and that religion the faith of the National Church.

The Committee cannot but regard it therefore as a most painful fact, that the Act of 1869 should have been framed in such a different manner as to leave out all express mention of education in the faith of Christ. At the same time, most imperfect, from their negative character, as they consider the terms of the Preamble to be, the Committee found even upon those terms the right to claim, under the sanction of this Act, express provisions for Christian teaching. They contend that, under "the main designs of the founders thereof," instruction in the faith of Christ must be comprised; and that, when a "liberal education" is specified as a "main" design, such education must, in the view of our founders, have comprised a bringing-up of youth in the fear of that God "whose service is perfect freedom," and in those truths and duties of Christianity which are the foundation of our modern civilisation.

The Committee feel that to such an interpretation of the terms of the Act itself the Commissioners were bound, and that in it they would have been fully borne out by the Report of the original Commission.

It may here be convenient to enumerate the classes of Educa-

tional Endowments which are by this Act exempted from the "interference" of the Commissioners.

Clause 14 enacts:—

Nothing in this Act shall authorise the making of any scheme interfering—

(1.) With any Endowment, or part of an Endowment (as the case may be,) originally given to charitable uses, or to such uses as are referred to in this Act, less than fifty years before the commencement of this Act, unless the governing body of such Endowment assent to the scheme;

(2.) With the constitution of the governing body of any School wholly or partly maintained out of the Endowment of any Cathedral or Collegiate Church, or forming part of the foundation of any Cathedral or Collegiate Church, unless the Dean and Chapter of such Church assent to the scheme;

(3.) With the constitution of the governing body of any School, which governing body is subject to the jurisdiction of the governing body of the people called Quakers, or of the congregation of United Brethren called Moravians, unless the governing body of such School assent to the scheme;

(4.) With the constitution of the governing body of any School, or with any exhibition (other than one restricted to any Schools, or School or district) forming part of the foundation of any College in Oxford or Cambridge, unless the College assent to the scheme.

Clause 8, s. 3, also exempts any school which *at the commencement of the Act* is in receipt of an annual grant from the Privy Council for Elementary Education.

Passing on to the provisions of the Act, so far as they concern religious instruction, the Committee lament that, with the exception of Clause 19, which they will consider separately, the provisions of the Act are of a negative character; so negative as to be liable, even though not intended, to be wrested to a destructive use.

Absolute power is given to the Commissioners to draw up entirely new schemes for Schools which have hitherto been uniformly carried on as Church of England Schools.

The governing bodies of such Schools might in future consist wholly of persons who are not members of the Church.

By Clause 17 it is provided that "the religious opinions of any "person, or his attendance or non-attendance at any particular "form of religious worship, shall not in any way affect his qualifica-"tion for being one of the governing body of an endowment."

Clauses 15 and 16 carefully provide that those scholars whose parents demand it shall be exempt from religious instruction and worship.

Clause 18 provides that (contrary to the existing rules of many such schools) masters need not be required to be in Holy Orders.

Clause 20 enables the Commissioners to transfer Visitatorial power from the Bishops and other spiritual persons who may have been entrusted with it, except in the case of Cathedral Schools.

Clause 21 abolishes all jurisdiction of the Ordinary relating to

the licensing of masters in any endowed school, or any jurisdiction arising from such licensing.

But in no case can the Committee discover, with the exception of Clause 19, that there is any direct provision made by the Act for the Christian and religious instruction of scholars in the endowed Schools affected by it.

So far as the Act is concerned, there is nothing to prevent—it is to be feared it must be added, there is much to encourage in lapse of time—the turning of these Schools into places of mere secular instruction, carried on without any reference to revealed religion.

The whole religious question is left to the chance of the changing votes of bodies of trustees, concerning whom it is specially enacted, that they may be of any or of no religious creed or persuasion. We are warned by the unhappy experience of the United States of America, that the invariable tendency of mixed boards of School Managers is, after a period it may be of protracted and earnest controversy on the religious question, to give up the attempt to preserve definite Christian teaching, and to take refuge in the secularisation of the instruction given, or the reduction of the religious element to the smallest form and merest outline.

These facts would be sufficiently painful and alarming if these Schools were new institutions, to be constructed for the first time under the provisions of the Act.

But when it is remembered that the vast majority of the School Endowments affected by it are, and ever have been, *bonâ fide* Church of England endowments, and as such are and have been used and prized by the people at large, the matter becomes a question of wrong, of decided aggression upon the property and sacred religious privileges, nay, the rights of conscience, of large sections of the population of England, who are members of its national Church.

Viewed in this light, the Committee cannot escape the conclusion that the Church is bound to use every effort to insure that in any future legislation—and future legislation, happily, from the temporary nature of this Act, there must be—there shall be distinct recognition of the religious claims of Churchmen, and of their rights of conscience. The Legislature must be reminded with no uncertain sound,—that those to whom the Christian religion and the faith of their Church are of supreme and vital importance in the education of their children, must have their property and vested interests secured by the Legislature, while they are quite content that the principle involved in what is called the Conscience Clause shall be sanctioned in the case of those parents who desire that it shall be acted upon. It is quite clear, that, unless Churchmen insist upon legal protection being given to their rights in these matters, there will soon be no rights left to be protected. Already are those who began with claiming the teaching of a so-called "general" and "unsectarian" religion in those schools, complaining that any religious instruction at all should be provided in them.

Those who attach value to the creeds and the distinctive teaching of the Christian Church must therefore assert their rights of conscience: it seems the duty of Churchmen to claim that the practice and teaching of the Christian religion shall be prescribed as heretofore in these schools for all those who desire them to be continued to their children, while upon those (who will practically be found to be very few) who may decline it such teaching shall not be enforced.

A provision which merely tolerates Christianity, and simply renders it possible, by means of chance and changing votes of Boards of Trustees, to be taught, will not satisfy the rights of conscience of members of the Church. They should not rest contented until legislation, in the case of our old Endowed Church Schools, shall have secured and perpetuated that great foundation element.

It is to be observed that in this respect, whatever else may be thought of the provisions of that Act, the "Universities Bill" of 1871 is a great improvement upon the "Endowed Schools Bill" of 1869; for the Universities Act, while throwing open Church of England endowments to all classes, irrespective of religion and of Christianity, expressly makes statutory provision that adequate religious instruction shall be given by the Colleges to all students who are members of the Church of England.

It is a grievance that what is secured for our young men in Colleges by Act of Parliament should not be provided for our boys in Grammar Schools.

The Committee are anxious not to be misunderstood. They do not accuse the Endowed Schools Act of proscribing or forbidding religious and Christian education in our Endowed Schools for the future. Under the Act such instruction is unquestionably allowable and possible. But the mere toleration of Christianity, and the treating it as one article of instruction which may or may not be given in a school, like Greek, or Latin, or Mathematics, will not satisfy the conscientious requirements of Churchmen or the sacred feelings of the people of England.

Examination of Clause 19.

It will, however, be argued, that, under Clause 19,* all room for complaint on the part of Churchmen is removed. That clause, it is contended, gives adequate protection to all endowments which can be proved to be of a denominational character, and only leaves to the operation of the more latitudinarian provisions of the Act endowments which were meant for the good of all classes, and which therefore may fairly be deprived of all restrictive provisions affecting religion, or the religious belief of the trustees appointed under the Act to administer them.

* The clause is quoted in full below, see p. 8.

The Committee freely admit, that, if Clause 19 really fulfilled the objects which it professes to secure, their labours would be much abridged and their alarm for the security of Church endowments would be to a great extent relieved.

But they charge that clause, and the Act so far as it is affected by it, as being to a great extent illusory, and they regard it as specially dangerous, because under the guise of protection it may be, and is, so worked as to bring about the destruction of the distinctive Church character of a vast number of our educational endowments. Framed, apparently in order to protect the interests of Churchmen, when thoroughly scrutinised it is found quite insufficient for that purpose.

The matter is so vital, and the Committee are so desirous not to exaggerate the state of the case, that they feel they cannot do better than put it in the words employed by the Commissioners themselves in paragraphs 51, 52, 53, 54, of their Report.

LI. Denominational character of endowments.

It still remains to speak of a department of our work which presents difficulties not only in point of strict law and of judicial discretion, but on account of the keen and almost irritable interest felt in it by not a few persons, an interest which sometimes leads them to forget that there is any law bearing on the case, and to impute our decisions to a wrongful bias, sometimes one way and sometimes the other, according as one party or another believes itself to be injured. We are referring to the questions connected with the doctrinal or denominational character of Endowments.

In order to explain clearly the course we have taken, and our reasons for it, it is necessary first to state the general law upon the subject, as we understand it.

LII. General rules of law of the question.

The rules established by the Court of Chancery are these: That every Endowment or Scheme for instruction requires religious instruction; that instruction in the Scriptures, such as is prescribed for the Irish National Schools, is not religious instruction at all; that in cases where no other special course is directed by the Founder, the Court will order instruction according to the doctrines and principles of the Church of England; that all teachers must consequently be adherents of that Church; and this result will take place even when general funds, such as dole funds, are converted by Scheme to the purposes of education. This statement is founded on the case of the *Attorney-General* v. *Cullum*, 1 Y. and C. C. C. p. 411. No question as to the Churchmanship of trustees was raised in that case. But the rule of law is that for an Endowment requiring instruction in the doctrines of the Church of England the Court of Chancery can only appoint members of that Church as Trustees. This rule was recognised in the case of *Baker v. Lee* (8 H. L. C., p. 495), where it was applied to an Endowment at Ilminster established by combination of the inhabitants in the year 1549 partly for the purpose of maintaining a schoolmaster for instruction as well in godly learning and knowledge as in other learning, and partly for repairing highways and other general purposes. But it has never been held that if a Nonconformist were appointed by his colleagues, or any other private person having power to appoint trustees, he would not be duly appointed (see *Baker v. Lee*, ubi sup., p. 513); and such appointments have been by no means unfrequent. With regard to conscience clauses, we believe that the Rule of the Court is expressed by "The Endowed Schools Act 1860," usually known as Lord Cranworth's Act, which was passed for the purpose of enforcing a conscience clause on trustees without the necessity of a Scheme

in each case. The rule is, that, where the Court finds the Endowment affected with an *express* trust for doctrinal instruction, it will not insert a conscience clause; but in all others it will insist on one whenever a Scheme is made.

LIII. hese rules still alid.

It is well known that efforts have been frequently made of late years to alter these rulings of the Court of Chancery, or that result of them which, at least when the Court itself had a voice in the appointment, excluded Dissenters from the management of nearly all Educational Endowments; but such attempts have always failed. Nor does the Endowed Schools Act make any direct alteration whatever in the law. What it does is to direct the Commissioners to insert certain provisions on this subject in their Schemes. So that the Endowments for which Schemes are made fall under new rules, while other Endowments remain under the old ones. It is very important to see what these provisions are.

LIV. rovisions of En- owed Schools ct 1869. ect. 15. ect. 16. ect. 17. Governing Body ot to be disquali- ed on ground of eligious inions." ect. 18. ect. 19.

Section 15 provides for a conscience clause of wider scope than those in common use, applicable to all Day Schools, without exception. Section 16 has a peculiar clause for pure Boarding Schools, a class of School which will very rarely exist. Section 17 runs as follows:—"In every Scheme (except as hereinafter mentioned) relating to any Educational Endowment, the Commissioners shall provide that the religious opinions of any person, or his attendance or non-attendance at any particular form of religious worship, shall not in any way affect his qualification for being one of the Governing Body of such Endowment." Section 18 directs the Commissioners to provide in all Schemes, "except as hereinafter mentioned," for the removal of the condition that Schoolmasters should be in Holy Orders. SECTION 19 contains the exceptions from Sections 16, 17, and 18. It must be quoted entire.

Schools ex- pted from pro- sions as to reli- on."

"A Scheme relating to—

(1.) "Any School which is maintained out of the Endowment of any cathedral or collegiate church, or forms part of the foundation of any cathedral or collegiate church; or

(2.) "Any educational Endowment, the scholars educated by which are, in the opinion of the Commissioners (subject to appeal to Her Majesty in Council as mentioned in this Act), required by the express terms of the original instrument of foundation, or of the statutes or regulations made by the founder or under his authority, in his lifetime or within fifty years after his death (which terms have been observed down to the commencement of this Act), to learn or to be instructed according to the doctrines or formularies of any particular church, sect, or denomination,

is excepted from the foregoing provisions respecting religious instruction, and attendance at religious worship (other than the provisions for the exemption of day scholars from attending prayer or religious worship, or lessons on a religious subject, when such exemption has been claimed on their behalf), and respecting the qualification of the Governing Body and Masters (unless the Governing Body, constituted as it would have been if no Scheme under this Act had been made, assents to such Scheme).

"And a Scheme relating to any such School or Endowment shall not, without the consent of the Governing Body thereof, make any pro-

vision respecting the religious instruction or attendance at religious worship of the scholars (except for securing such exemption as aforesaid), or respecting the religious opinions of the Governing Body or Masters."

We have had so perpetually to explain to our correspondents what we understand these clauses to require, and what is the most convenient mode of carrying them into action, that we caused an explanatory paper to be printed, which is marked L., and appended to this Report. Appendix 8.

LV. Difficulty of the question raised by sect. 19.

The first question which this part of the Act raises in every Scheme is whether the Endowment falls within Section 19 or no. To decide this is a task of no mean difficulty. For the Act applies a new legal criterion to old documents and events, which never were intended by their framers or actors to be so judged, and the results are sometimes very unexpected. And the subject may be said to constitute a new province of law, the very terms being (at least in this connection) new, and not illustrated by previous decisions or arguments. At the same time, though the parties interested sometimes express their feelings very strongly, they have never hitherto taken the course of arguing the case before our decision, or of appealing afterwards; so that we are left unassisted by any legal argument, and there is no ruling of an Appellate Court to guide us. This question, then, which lies on the threshold, often takes up a large portion of our time and attention, and there are cases in which, after the best consideration we can give, the conclusion arrived at is very doubtful to our own minds.

Upon this the Committee have to observe that the Act proposes to provide adequate protection under Clause 19 for *all* Church of England or other denominational endowments. Accordingly all the existing *de facto* Church of England endowments are made to fall under one of two categories—either they meet the requirements of the Act under Clause 19, and so are supposed to be preserved to the Church, or, failing to do so, their distinctive Church character is swept away, they are consigned to the government of miscellaneous bodies of trustees who must on no account be selected with reference to their religious opinions, and the religious instruction they give, if any, is to be dependent on the passing by vote of certain rules and arrangements made by such trustees in conjunction with the head master, who may or may not himself be of any religious creed. This last point is not prescribed by the Act, but is so arranged in their "Schemes" by the Commissioners.

While some few Church Endowments will be saved, and even those imperfectly (as will be made hereafter to appear), under this clause, the Committee have no hesitation in saying that multitudes will be lost which on any ground of law as hitherto interpreted by the highest Courts, and certainly of Equity, ought to be preserved as distinctly to the Church as the few which do thus escape.

The law of England is thus described in Report of the Commission 1868, vol i., pp. 458–9, by two most eminent authorities—the present Lord-Chancellor and Sir Roundell Palmer:—

"On this proviso being opposed, Vice-Chancellor Wood said, It "was impossible to hold, looking to the whole scheme, frame, and

"general foundation of charities of this description, that any "School, founded as this has been by one of the Sovereigns of this "country, for the purpose of teaching grammar, could be other than "a School not only for teaching grammar, but also for sound re- "ligious education; and, looking to the period at which these "Schools were founded, such education must have been education "according to the doctrine and discipline of the Church of Eng- "land . . . Looking to the regulations relative to the licensing of "Schoolmasters and regulations in regard to teaching in general, "which were not superseded until so late a period as the time of "George III., a great deal might be said in support of the position "that foundations for instruction of any kind, at least down to "the time of Charles I., involved necessarily" (*i.e.* not merely as an important element) "religious instruction."

Sir R. Palmer used similar language: "I think it is now well "settled that in all cases where the Court settles a Scheme, it being "a Church School, it says religion should be taught according to "the principles of the Established Church, but that no children "whose parents, or persons standing in the place of parents, object, "should be compelled to learn any formularies or to attend the public "worship of the Church of England. Even if the School be not a "Church School, nor of any other particular denomination, I do "not know that there is any very substantial difference in that "respect, because the Court always considers that religion should "be taught in any place of general education under its control, "if not excluded by statute."

This being the law, and these the rights under the law, up to the passing of this Act, of Church School Endowments, the Committee have to accuse Clause 19 of, by the extreme narrowness and stringency of its conditions, ensuring the exclusion of a vast number of Schools which, on every principle of equity and fairness, ought to be preserved to the Church.

In order to illustrate this part of their case, the Committee append a selection of cases,* some of which have fallen, or it is supposed will fall, under Clause 19, and so enjoy such protection as is thereby secured to Church Schools—the others fail from some unhappy technical flaw to meet the requirements of that acutely constructed Clause, and are swept away into the class of non-denominational Schools. And yet, tried by every test of common sense and fair dealing, not to say of the law of England as laid down by our Courts of Equity, these last are as much entitled as the former to continue, what they have all along been, *bonâ fide* and historically Church of England Schools.

In this respect the Endowed Schools Bill 1869 has contradicted the whole spirit and letter of Lord Cranworth's Bill of 1860, which was passed in order to introduce the so-called conscience clause into such

* See Appendix A.

Schools. That Act thus runs: "It shall be lawful for the Trustees or Governors of every Endowed School, from time to time, to make, and they shall be bound to make, such orders, as *whilst they shall not interfere with the religious teaching of the other scholars as now fixed by Statute or other legal requirement, and shall not authorise any religious teaching other than that previously afforded in the School, shall,*" &c. &c.

The Committee have further to urge that these novel and unjust provisions of the Endowed Schools Act are in direct contradiction to an Act which was, at the time of its being passed in the year 1844, considered to embody the true principles of "Liberal" legislation with regard to Endowments. It was an Act much opposed at the time, but was considered to have finally laid down the principle upon which legislation on such subjects was to be carried on. This was the "Dissenters' Chapels Bill." And what was the principle embodied in the Dissenters' Chapels Bill?

Simply this, in the words of Clause II.—

And be it enacted, That so far as no particular religious doctrines or opinions or mode of regulating worship shall on the face of the will, deed, or other instrument declaring the trusts of any meeting-house for the worship of God by persons dissenting as aforesaid, either in express terms or by reference to some book or other document as containing such doctrines or opinions, or mode of regulating worship, be required to be taught or observed, or be forbidden to be taught or observed, therein, the usage for twenty-five years immediately preceding any suit relating to such meeting-house of the congregation frequenting the same, shall be taken as conclusive evidence that such religious doctrines or opinions or mode of worship as have for such period been taught or observed in such meeting-house, may properly be taught or observed in such meeting-house, and the right or title of the congregation to hold such meeting-house, together with any burial-ground, Sunday or day school, or minister's house attached thereto; and any fund for the benefit of such congregation, or of the minister or other officer of such congregation, or of the widow of any such minister, shall not be called in question on account of the doctrines or opinions or mode of worship so taught or observed in such meeting-house: Provided nevertheless, That where any such minister's house, school, or fund as aforesaid shall be given or created by any will, deed, or other instrument which shall declare in express terms, or by such reference as aforesaid, the particular religious doctrines or opinions for the promotion of which such minister's house, school, or fund is intended, then, and in every such case, such minister's house, school, or fund shall be applied to the promoting of the doctrines or opinions so specified, any usage of the congregation to the contrary notwithstanding.

The Committee are at a loss to discover on what grounds an exactly opposite principle has been adopted by the Legislature in the case of Educational Endowments in 1869. They ask for the application of the principle of the Dissenters' Chapels Bill of 1844, which included the case of Sunday and Day Schools, to Educational Endowments in general, and that a given period of occupation similar to the twenty-five years here appointed should be respected in the case of all those *de facto* Church of England

Schools which, in their original deeds or instruments, fail to satisfy the stringent requirements of Clause 19.

And here the Committee feel it only right to state distinctly, that, while they are specially pleading the cause of Church Schools, they are most desirous that the same principles should be applied to the Educational Endowments of every other religious body. They wish all alike to be secured from that confiscation which is measured out under the provisions of the Act to all similar Endowments.

It so happens that the vast majority of our Educational Endowments belong to the Church of England. But by all means let a like protection be given to all, whether Roman Catholic, Wesleyan, Independent, or Unitarian. The Committee, in this point of view, observe with satisfaction that certain "Quaker" and "Moravian" Schools are exempted under Clause 14 from the provisions of the Act, which would otherwise throw open the government of their schools to trustees of any or of no religious belief. They do not understand why these religious bodies should have been specially exempted, while they heartily approve of such exemption. All that they have to claim is a similar exemption for Church of England trusts. Churchmen have no wish to interfere or meddle with the endowments of other religious bodies They may well be allowed to ask for the preservation of their own.

II. *The Action of the Endowed Schools Commissioners.*

The Committee proceed to remark upon the action and proceedings of the Commissioners appointed under the Act so far as such proceedings appear open to objection as endangering the security of Church of England School Endowments.

They are perfectly willing to concede, that, for much of the action of the Commissioners of which the Church has to make complaint, it is the Act itself which has to be blamed. They are quite sure that in all matters in which discretion has had to be exercised by the Commissioners, as in the delicate question of the selection of new trustees under the schemes devised by them, they have desired to act honourably and fairly to all parties upon the principles of the Act, and that, except so far as they may have thought themselves compelled to carry out what must be deemed the unfair provisions of the Act itself, they have sought to do justice to the Church as well as to other parties concerned.

But yet the Committee, on a consideration of various schemes already passed, and of the principles involved in very many more which have been proposed and published, though not passed, are constrained to express dissatisfaction on behalf of the Church with much of the action of the Commissioners.

For instance, while the Commissioners have been very stringent

as to the nature of the proofs they have required to bring Church Endowments under Clause 19, the Committee are at a loss to understand how, in the case of those Schools which they have allowed to come under Clause 19, they have, without the consent of the existing governing body, provided for that which the clause seems to ordinary minds devised expressly to forbid, viz., that Dissenting Trustees may be appointed, "*by election*," to administer exclusively Church Trusts.

In justice to the Commissioners the Committee quote what the Commissioners say on this subject, in their Report p. 35, though it fails to give satisfaction to their own minds.

LVII. Course pursue in cases falling under sect. 19.

In the case of Endowments which, as having an express requirement of denominational teaching, fall within section 19, our course has been this: We have not thought it expedient to deviate from our ordinary practice of repealing all former deeds or rules governing the Endowment, for that might have involved the Governing Body in much future embarrassment, arising from a conflict, real or assumed, between the old directions and those of our scheme. As an equivalent, therefore, for those parts of the repealed documents which brought the Endowment under section 19, we have put a short but sufficient expression of the denominational character of the Endowment in the first clause of the Scheme, and have excepted that clause from the power of alteration which, in pursuance of Section 28 of the Act, the Schemes give to the ordinary jurisdiction of the Charity Commissioners. Then in framing the first Governing Body we usually place on the Trust some person or persons holding offices in the Church; and in naming coöptatives we consider that we ought to follow the rule of the Court of Chancery, and not to appoint a Dissenter. When an elective element is introduced, as is the case almost universally, we think it should be less numerous than the clerical and coöptative. With these precautions, it seems to us that Endowments within Section 19 may fairly be left to the operation of law.

LVIII. Ought the Sch to prescribe a religious quali cation for Governors?

We have indeed been urged in some cases to provide that all Governors shall be Churchmen; that is, that when we are not allowed (of our sole authority) to insert Section 17 in a Scheme, separating religious opinions from the qualifications of Governors, we ought to go further and enact positively that certain religious opinions *shall* constitute a necessary qualification. But this appears to us to be a restriction upon freedom of choice, which we do not think it expedient to impose.

So that the Commissioners have ruled that the prohibition to make provision respecting the religious opinion of the Governing Body, without the consent of the Trustees, sanctions them in providing for the infusion, by "election," of any number of non-religious or Dissenting trustees in the Government of these schools. By this means Dissenting Trustees or unbelievers may, by election, be largely imported into the Governing Bodies which Clause 19 professes to reserve exclusively to the Church.

Again, with reference to the large class of schools which, not falling under Clause 19, are, as the Committee conceive, most unhappily referred to the class of schools left to the Commissioners' general Schemes, the Committee consider the Commissioners have pressed the provisions of the Act, as against the Church and the

parties at present enjoying the benefits of the school, with a severity which the Act in no way enjoins upon them. In certain respects the discretion and power left to the Commissioners is almost unlimited. There would therefore have been nothing to prevent the Commissioners under the Act which guards the consciences of non-Church or secularist parents by most careful "Conscience Clauses" from protecting the consciences of Church parents by prescribing in the new Schemes that to their children the religion and formularies of the Church should be taught *as heretofore* by the various rules and constitutions of the new Schemes.

The Committee consider that under Clause 11 this is nothing less than the duty of the Commissioners. That clause is as follows:—

> It shall be the duty of the Commissioners in every Scheme which abolishes or modifies any privileges or educational advantages to which a particular class of persons are entitled, and that whether as inhabitants of a particular area or otherwise, to have due regard to the educational interests of such class of persons.

The Commissioners, on the other hand, consider that they have in these cases done their duty by means of the following provision with reference to the vital question of religious instruction:

LIX. gious in- ction.

> "The Governors and Head Master shall, within their respective departments, as hereinbefore defined, and subject to the provisions of this Scheme, make proper regulations for the religious instruction to be given in the school."

And in their Report, p. 36, they thus justify their action in this matter:—

> On the subject of religious instruction to be given in the School we have not felt much difficulty. The intention of the Act can hardly, as we think, be mistaken. Its object is to leave the religious character of these foundations to be determined with the utmost freedom by the local managers. We have therefore laid on the Governing Body and the Head Master, each within the general powers assigned them by the Scheme, the special duty of regulating the religious instruction to be given in the School. It is undeniable that under that provision the duty so enjoined may be performed in greater or less proportion to other instruction, but still the matter must be left to the Governing Body, who, it is hoped, will be so constructed, as always to study the needs and sentiments of those who use the School.

The Committee under this head must repeat the protest they have already made with reference to the Act itself, as to the conduct of the Commissioners in exercising their discretionary powers under the Act. They object most strongly in the name of the Church, and of the Christian feelings of the people of this country at large, against the sacred and all important question of the religion which is to be taught in a school being left to the chance votes, both as regards its quality and its quantity, of a majority of a body of Trustees, which will be fluctuating and changing from year to year. The religion is not even fixed to be Christian.

They complain that in their new Schemes the "religion" to be taught by our old endowments should not be settled in the scheme *as heretofore* to be that of the Church of England (subject, of course, to a Conscience Clause), and that provision should not be made that the master be a member of that Church.

Again, the Committee object to the needless and uncalled-for abolition in all their Schemes of the Visitatorial powers of the Bishops and other ecclesiastical officers. The Act admits of such abolition, but it nowhere enjoins it. The Commissioners have uniformly carried it out, and thereby deprived Churchmen of a guarantee for the religious teaching of their children, which in time to come would have been invaluable under the altered circumstances of these schools. The Committee are confident that in many of our towns the dissenting population themselves would gladly, even on social grounds, see our Bishops retained as visitors of the schools.

On the other hand, the Committee have great pleasure in recording their sense of the fairness and the courage with which the Commissioners have supported the justice of putting into the trusts of these schools *ex-officio* Trustees, such as the incumbents of parishes, to watch over the interests of their parishioners in such matters.

In the Appendix* will be found Questions put and an Opinion, which will give full information on this subject. The Commissioners in their Report have, much to their credit, reaffirmed their original views on this point. See Report, p 35, and Appendix G., p. 76.

For the present the Committee of Privy Council have practically compelled the Commissioners to act against their own judgment in this matter, and to cease to appoint such *ex-officio* Trustees. But, after the "Opinion" of Sir Roundell Palmer, the Church cannot allow the matter to rest here. Either by legislative enactment, or by appeal to the Courts of Law, on the meaning of this Act, the just rights of Churchmen must be recovered.

Another most important matter has been arranged by the Commissioners in a way most unjust in itself and injurious, in many cases, to the Church's Elementary Schools. In the Appendix† will be found a statement of the Church's claims in this matter with reference to Paper S. issued by the Commissioners. The Committee will not further enlarge upon the subject here, except to say that they consider it of vital importance that the Church should continue in every way to assert its claim to the employment, *as heretofore,* of *small* Educational Endowments for the *ordinary maintenance* of its Parochial Elementary Schools. The claim of the Commissioners, that in future such Endowments should not be applied to ordinary maintenance, is grounded on the argument, which never can be conceded by the Church, that the "Elementary Education Act" compels every parish to maintain a

* See Appendix B. † See Appendix C.

School by rate, and that therefore endowments are not required for that purpose. The Committee confidently assert that this is a misrepresentation of that Act and of its history. This Act contemplates and encourages the continued existence of voluntary Schools to be supported by subscriptions, endowments, &c., and only prescribes *in the last resort* the levying a rate to establish a School which must be undenominational. To alienate small Endowments from our Parochial Church Schools would be in many cases to compel what the Act is framed in great measure to avert, —the formation of Rate Schools.

The Commissioners thus state the question from their point of view. Report, p. 32 :—

We think that the words of Section 5 of the Elementary Education Act must be taken to mean no more than they naturally import, viz., that whenever as a matter of fact there is not sufficient provision for Elementary Education either in Public Elementary Schools or otherwise, the deficiency shall be supplied. Or, again, we would reason as follows :—The Endowed Schools Act was prior to the Elementary Education Act, and we conceive that each Act must be read by the light of the other, and that the express powers conferred by that earlier one, of dealing with any Endowment in any way most serviceable to education, could not be meant to be restricted by vague general words in the later one, so as to determine the application of a large number of Endowments to one particular way. The Endowed Schools Act placed all Endowed Schools, so to speak, under notice of revision as to their whole constitution and destination ; and they were consequently not, pending that revision, existing for Elementary or for any other specific purpose in the unqualified sense necessary for the construction contended for. There is, however, no question but that the Elementary Education Act has altered the state of facts on which the Endowed Schools Act has to work. The question is whether we have rightly appreciated this alteration.

III. *Practical Steps to be taken by the Church.*

With regard to the third question, as to what steps should be taken to redress the injuries inflicted upon members of the Church of England in the matter of religious instruction under the working of the Endowed Schools Act, the Committee offer the following remarks :—

The Act itself terminates at the end of 1873, and with it the powers of the Commissioners. These powers, however, will be exercised until then.

Up to February, 1872, the Commissioners report that the whole number of Schemes which had under their hands passed into law amounted to 24.

34 were before the Privy Council, but had not become law.

84 draft schemes had been published.

214 were under discussion, and 733 had been the subject of correspondence.

The total number of endowments for which Schemes might, and if time allowed probably would, be made amount to 3,000.

The Commission will have more than eighteen months in which to carry on its work, but it may be expected that that work will proceed at a much more rapid rate than during the past two years and a-half.

The Committee, in consideration of these facts, strongly advise—

1. That Churchmen should be recommended to exercise all possible vigilance in the case of every separate scheme brought forward by the Commissioners. Up to the present time these operations have been mainly confined to the counties of Somerset and Dorset, and the West Riding of Yorkshire; latterly they have been extended to North Wales, Essex, Staffordshire, and Devonshire. Apart from the religious question, much discontent and popular dissatisfaction have been created (with what justice it does not fall within the province of the Committee to decide) on account of the proposed transfer of many endowments from the poor to the classes socially above them, and of the abolition of local and parochial privileges, which the elaborate and centralised Schemes of the Commissioners proposed, too often, as it is alleged, without reference to local feelings, wants, and experience.

2. That the special attention of their Lordships the Bishops be respectfully called to the operations of the Commissioners in their respective Dioceses. They believe that the greatest benefit would accrue if the Bishops were to call together for collective counsel and action the Trustees of all Church of England endowments, and would encourage and advise them to united endeavours to maintain the vital religious interests of the members of the Church, and to aid in shaping and moulding the various "schemes" of the Commissioners in a way which would most benefit each Diocese as a whole. The matter might also well be made to engage the attention of Diocesan Synods or Conferences.

3. They would further suggest that, as in all cases of charities exceeding £100 a-year not less than *seven* months, and of those below that sum *five* months, *must* of necessity be spent in the various stages enjoined by the Act before a Scheme can become law, there is ample opportunity for such a careful watching of each particular case. Moreover the last stage consists of a period of 40 days during which a Scheme must lie on the table of each House of Parliament. The Committee would very respectfully urge upon Churchmen the sacred duty incumbent upon them to move for the rejection, either by the Bishop of their Diocese, or some other Peer, or by their representatives in the House of Commons, of all such Schemes as may be justly condemned for the danger and imperfection of their provisions so far as they affect religion, or for their unjustly depriving Church of England Schools of their distinctive character as such.

4. That the various points on which they have already touched with regard to the action of the Commissioners should be carefully

seen to by Trustees and others as each particular scheme is "published" for general consideration by the Commissioners. They are such as these—The bringing Church Schools, as much as possible, under Clause 19—the watching the proposals of the Commissioners made in applying that Clause, and the insisting upon Clause 11 being carried out for the purposes of religious instruction. Just grounds of complaint will be—the leaving to the chance votes of changing bodies of Trustees what shall be the "religion" of a School—not necessarily even, it would seem, "Christian"—the abolition of the Visitatorial functions of Bishops and other Ordinaries—the refusal to appoint Incumbents of Parishes and others as *ex-officio* Trustees—and, not least, the transfer from the maintenance of the small Elementary Parish Schools of those endowments on which so much of their permanence must depend.

Firmness on these points must, the Committee believe, avail to the averting of many evils which now threaten so many of our old Church School Endowments.

5. But the members of the Church should not be satisfied with watching and endeavouring to rectify the proceedings of the Commissioners.

They should hold themselves prepared *to act upon the Legislature whenever the time for introducing a new Act may arrive.* The next measure passed by Parliament with reference to Educational Endowments will, and must, if Churchmen do their duty, be of a very different character from the Act of 1869.

6. The main point to be aimed at at such a time will be a Clause protective of the distinctive character of Church of England Endowments, constructed in a very different and far more generous and equitable spirit than Clause 19 of the present Act. The provisions of the Dissenters' Chapel Bill of 1844, of the Universities Bill of 1870, nay even, in one particular, of the Irish Church Act of 1869,—inasmuch as that measure, from a specific date, defined and protected the private and denominational character of Endowments in a way which might well be quoted with reference to our School Endowments,—should all be appealed to as justifying a different mode of dealing with our Endowed Schools

7. It must also be urged upon the Legislature, that, if the just claims of the Church in these respects are not provided for by means of her old School Endowments, Churchmen must, by new institutions and freshly-founded Schools, make provision for the Christian education of their own children. It will then be a serious question of what avail will these endowments, if practically secularised, become, when the known preference of the great majority of the people of England of all classes for the definite Christian education of their children is taken into consideration.

The Church of England must, in loyalty to her Divine Head, and in faithfulness to that Gospel which is committed to her

charge, demand that by means of her old School Endowments the children of her members shall be taught in time to come, as heretofore, the whole of her doctrine and discipline unimpaired, while she is ready to admit such provisions for extending the secular benefits of such Endowments to those who are not of her communion as the Legislature in its wisdom may make. In yielding cheerfully the rights of conscience to others, the Church must see to it that the rights of conscience of her own members, which demand the continued religious instruction of their children in the principles of their own Church, shall in no way be overlooked or curtailed.

GEORGE H. FAGAN,
Proctor for Diocese of Bath and Wells,
Chairman.

July 1*st*, 1872.

APPENDIX A, page 10.

Dr. Morgan's School, Bridgwater.

The following statement, furnished as a reply to the queries of the Committee, is printed in full as a specimen of the Endowed Schools Commissioners' mode of dealing with Schools which are allowed by themselves to fall under Section 19 of the Act.

This scheme was one of the very earliest published and concluded by the Commissioners, and a statement of its working and results would seem to preclude the necessity of seeking to multiply these instances, inasmuch as no stronger case of a School tied up in every possible manner to the Church by its Founder could be cited; while, on the other hand, the Commissioners are prepared to justify, and to repeat in other like cases, the process carried out by them.

Dr. Morgan's Church of England School was founded by him in the year 1723. The original object of the endowment was to provide clothing and education, and particularly religious instruction according to the doctrines of the Church of England, for the children of decayed inhabitants of Bridgwater. These objects are set out in the Founder's will, an extract from which is appended.

In 1857 the Master of the Rolls made an alteration in the School; admitting other boys besides the Foundation Boys as Day Scholars, at a small weekly payment. Great numbers of Dissenters have been educated at the School. The Endowed Schools Commissioners have now changed it to a third grade School.

The Scheme of the Endowed Schools Commissioners is sent herewith.

1. The benefit of the *Foundation* is opened to Dissenters as well as Churchmen, as the reward of secular merit only.

2. All the special requirements made by the Founder for ensuring a certain amount of knowledge of the doctrines of the Church of England previously to admission and for ensuring instruction in them afterwards and attendance at Church are repealed, and the only provision substituted is a general one that the School is to be conducted in accordance with the principles and doctrines of the Church of England.

3. There is no provision that the Master and elected Trustees shall be members of the Church of England, *and, as a matter of fact*, the Mayor and Chairman of the School Board (who are made ex-officio Trustees) and all the Trustees who have been elected by the Town Council and School Board are *Dissenters.*

4. The Church in Bridgwater has lost its principal primary Boys' School, and Mr. Fitch, the Assistant Commissioner, told the Trustees that the School Board would now supply elementary Primary Schools, and that therefore Dr.

Morgan's School was not needed for that purpose. As, however, the Church-people of Bridgwater thought that the Schools to be supplied by the Board (not being Church of England or even necessarily Christian Schools) would not be a substitute for D. Morgan's School, they have been obliged to convert two Church of England mixed Schools, which were originally built for the very poorest section of the town, into a Primary Church of England Boys' School of a higher type to supply the place of Dr. Morgan's School, and to leave the poorest classes to be provided for by the Board.

5. The Trustees, having no longer a common object or a common agreement as to the principal object of Dr. Morgan's School, do not work harmoniously; there is an unwillingness, nay a refusal, to undertake any of the responsibilities necessary for effecting the change to a third grade School, and absolute indifference whether the experiment succeeds or fails. A third grade Church of England School is undoubtedly much wanted in Bridgwater, but further funds beyond Dr. Morgan's foundation are required to make it efficient. It ought to be a Boarding School, and should supply the needs of the surrounding agricultural population. There would be no difficulty in providing these funds if the Trustees possessed the confidence of the Church, but it would be hopeless to ask for subscriptions in the face of the fact that six of the Trustees of this Church of England School are Dissenters from the Church.

GABRIEL S. POOLE.

One of the Trustees of Dr. Morgan's School.

Extract from the Will of Dr. John Morgan.

16th June, 1723. Will of Dr. John Morgan, of this date, whereby he devised as follows:—

"I give and devise my Manor of Huccombe and all my lands, &c., in Huccombe unto the Mayor, Aldermen, and Burgesses of the Borough of Bridgwater, upon trust, that they, &c., do and shall out of the rents and profits, &c., erect a Charity School in Bridgwater aforesaid, and keep and support one able and judicious Schoolmaster to teach and instruct the sons of decayed inhabitants of the borough and parish of Bridgwater aforesaid, not receiving alms or relief, to write well, to learn arithmetic, navigation, and the mathematics, such schoolmaster to be paid £10 or £15 per annum, at the discretion of the said Mayor, Aldermen, and Burgesses, for his careful instructing and teaching lads as the said Mayor, Aldermen, and Burgesses shall send unto him so to be taught and instructed; and my will and meaning is, and I do hereby direct, that *no lad* shall be sent to the said Charity School before he is able to read the Psalter and has learnt the Church Catechism and can give a tolerable account of it."

Then follow directions for clothing the lads "in a blue coat and cap," in which habit (he says) my will is, that all Sundays and Prayer days they and their said master shall resort to the Parish Church of Bridgwater aforesaid to serve God; my will and intent being that none shall have the benefit of this my Charity but those who are or shall be of the Church of England as by law established; and I further will and direct, that the said Mayor,* Aldermen, and Burgesses,† the Archdeacon of Taunton, the Vicar of Bridgwater, the Rector or Minister of Chedzoy, the Minister of North Petherton, the Minister of Goathurst, and the

* At the date of the Founder's will the Corporation and Test Acts were in force, and therefore the Mayor, Aldermen, and Burgesses were necessarily members of the Church of England.

† Four of these *ex-officio* Ecclesiastical Trustees have been suppressed and

Minister of Spaxton in the said county of Somerset for the time being, shall be Guardians and Trustees to see this my Charity truly and justly disposed of."

Then follow directions as to the accounts and other matters not important.

The following specimens of modes of dealing with School Endowments, admitted by the Commissioners to be Church of England Trusts under Clause 19, have been brought under the notice of the Committee—in each case a majority of the Trustees have accepted the scheme:—

NOWES' CHARITY, Somerset, Wilts, and Hants.

One-fourth of this Church charity has been diverted, by the pressure of the Commissioners upon the Trustees, to the training of boys in Yeovil School (being not denominational) who shall *not* be required to be instructed in the formularies of the Church of England. The remaining three-fourths of the income may be applied to the Church education of boys in other Schools, *but only on the above condition.*

ELLSWORTH'S SCHOOL CHARITY, Somerset; parishes of Timberscombe and Cutcombe.

This scheme deprives the Parish School of Timberscombe of annual income which it has hitherto enjoyed for the Church education of the children, and it is alleged that a necessary consequence of this must be the formation of a Rate School, which must exclude the children of that parish from such Church instruction as the founder designed for them.

Much of the income of this Church charity is for the present to be devoted to exhibitions from various parochial schools, "at which instruction according to the Church of England is given," in the neighbourhood. The conditions, however, derived from the Clauses of the Act are such, that it appears impossible to connect any religious examination with these exhibitions. If so, they will be exclusively for the encouragement of secular instruction.

The following cases have been furnished to the Committee, in which the Commissioners have actually ruled, and with regard to the others it is feared by the Trustees that they will rule, that they do not fall under Clause 19, and so propose to do away with the bonâ fide Church character which they have hitherto enjoyed, on the grounds specified in each case.

It will be remembered that the "Schemes" hitherto "published" are but few.

1. Colchester Grammar School. A.
2. Halstead Grammar School. B.
3. Earl's Colne Free Grammar School. C.
4. St. James's, Westminster. Archbishop Tenison's School. D.
5. Ditto. Burlington School. E.
6. Joye's School. St. Anne, Blackfriars. F.
7. St. John's Hospital. G.
8. Churchdown School, Gloucestershire. H.
9. Bath Bluecoat School. I.
10. Wells Blue School. K.

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two new ones (the Vicars of Trinity and St. John's churches in Bridgewater) only substituted. Those suppressed are the Rectors or Ministers of Chedzoy, North Petherton, Goathurst, and Spaxton.

A.—Colchester Grammar School.

This School was founded by Henry VIII., reformed by Queen Elizabeth, and endowed with property derived from the suppression of the chantry of St. Helena —free to 16 sons of burgesses—to be instructed in Latin and Greek, and the principles of the Christian faith according to the doctrines and discipline of the Church of England. Master and Scholars were to attend church together, and with such of the pupils as were of sufficient age. The Master, who was to be in Holy Orders, was to receive the Holy Sacrament not less than four times in a year. The boys were to be instructed out of Nowel's Catechism "as prescribed to be taught in Schools," in Latin or Greek, as they were able to bear it. Latin to be the language of ordinary conversation, unless with such as could speak Greek. The direction of the School was by letters patent of Queen Elizabeth vested in the Bishop of London and Dean of St. Paul's, by whom *within* 50 *years of the foundation* the statutes were drawn up.

In 1844 new statutes were made and approved by the Court of Chancery, under which the School was made free to 20 sons of residents, who, *inter alia*, were to be instructed twice in the week in the doctrines of religion as set forth in the Scriptures, the Articles, Catechism, and Common Prayer, the Head Master being still in Holy Orders. I am sorry to trouble you with these particulars, but they are necessary for the understanding of some parts of our grievance against the Endowed Schools Commissioners.

The distinctively religious character of the School under clause 19 is denied by the Commissioners, and they take their stand on the ground that Nowel's Catechism was never recognised as a formulary of the Church of England, and that no directions as to qualifications of Head Master, or attendance on the part of himself or the scholars at particular forms of worship, is sufficient to constitute so distinctively religious an endowment as to claim exemption under clause 19. On this point our trustees are about to be heard by counsel.

B.—Halstead Grammar School.

The School was founded as a Grammar School by Lady M. Ramsey in 1594. It has been by ancient custom a Church School, and the master by prescription a Churchman. The existing Scheme, however, was settled by the Court of Chancery in 1858 ; and it provides that—

(*a.*) That the Vicar of Halstead for the time being should be *ex officio* a Trustee.

(*b.*) That a sermon should be preached by him in St. Andrew's Church, at the time of the annual examination of the School; two guineas to be paid to him for the same.

(*c.*) That the Head Master and Second Master should be members of the Church of England.

(*d.*) That "suitable prayers taken from the Liturgy of the Church of England should be read by the Head Master every morning and evening in the said School," and that (except in the case of pupils whose parents objected) he should take care that each boy is well versed in the Church Catechism."

These provisions had the effect of keeping the Church as distinctively a *Church School*, although it has been largely attended by the children of Dissenters. It has for several years past been *full*, and conspicuously *successful ;* so that the Government Commissioner who examined it in 1867 recommended in his report (Blue Book Reports, vol. xiii. p. 67) the supplementing of its funds, if possible.

The Endowed Schools Commissioners have accordingly recently presented a Scheme (Jan. 1872) for the enlargement and reconstruction of the School. In

this Scheme they strip it entirely of every vestige of its connection with the Church.

Every one of the provisions mentioned above is to be reversed.

C.—Earl's Colne Free Grammar School.

1. Founded by Christopher Swallow in 1520, to maintain an honest, learned, and godly man to execute the office of Schoolmaster at Earl's Colne.

2. (*a.*) The original Trust Deed being lost, the information concerning the Charity in the preamble of the present Scheme (dated 1843) is collected from proceedings in Chancery, &c.

3. (*b.*) The founder was a *Clergyman*, Vicar of Messing. An inquisition taken in regard to this Charity in 1611 resulted in a decree that the Bishop of London or (if that see was void) the Archbishop of Canterbury should nominate the Master, who should be a graduate of Oxford or Cambridge, and take no other benefice or cure. This decree was superseded ; but it shows what was then held as to connection with the Church. And in accordance with this, by the Scheme of 1843, the Master must be a "member of the Church of England."

4. The Endowed Schools Commissioners have intimated to the Trustees that the provision made in the old Scheme, that the Master shall be a member of the Church of England, *will not be retained* in the Scheme they are about to publish.

D.—St. James's, Westminster. Archbishop Tenison's School,

Founded by him for the education of 40 boys, in connection with a Chapel, also founded by him, in St. James's Parish.

The Trust Deed constitutes the Minister of the Chapel, Master of the School, and provides for the School being held in the Chapel, but it does not say "totidem verbis" that the boys shall be educated in the principles of the Church of England. Founded by an Archbishop, and uniformly conducted as a Church School, there could be no possible question about the exclusive right of the Church to it.

A Scheme of the Commissioners completed last year, now in operation, affords no security for the permanent connection of the School with the Church of England. The Master (as to the teaching) might be a Unitarian, a Baptist, a Mormonite, or anything else, for aught the Scheme provides to the contrary.

E.—Burlington School,

For boarding, lodging, clothing, educating, and training for service poor girls of the Parish of St. James's, established about 170 years, but under no deed, and with no original endowment.

"By custom and continuous occupation" the School has been exclusively a Church of England School, distinguished in the parish as "the Rector's School," and every sixpence of its funds derived from Church people. In 1864 the Charity Commissioners approved a Scheme, promoted by the Governing Body, which made no essential change in its objects or administration, but authorises some minor improvement.

A Scheme recently put forth by the Commissioners leaves the religious character of the School to be settled by a governing body, which, in process of time, might have no religious character whatever.

F.—Joye's School, St. Ann, Blackfriars.

Under the Trusteeship of the President and Fellows of Sion College, by deed dated February 22, 1716, for the teaching of a certain number of poor boys and girls of that parish and neighbourhood reading, writing, and arithmetic, express mention being made of the Church Catechism, and of attending on Sundays and other days at the Parish Church, both morning and evening, and to answer questions in the Church Catechism publicly during Lent.

No action has been taken under the Endowed Schools Act, beyond obtaining all particulars about the School. But the anticipation is, that, when sufficient provision has been made for the children of this class by the rate-supported Schools, under the School Board of London—the endowments of this School (amounting to about £316 per annum) will be diverted to the support of higher class schools, especially as the population is not now half what it was.

G.—St. John's Hospital Grammar School, Exeter.

Orphanage for 25 Boys, 25 Blue Maids clothed and taught, 175 Day Boys.

I think St. John's Hospital is a clear case in point where the Endowed Schools Act would weaken the Church and do her wrong. Ever since its foundation that Hospital has been connected with the Church. A Church of England clergyman has been its chaplain. The children have been *by rule* obliged to attend Church services, and the Church formularies have been taught, her holy days regarded, &c. And now this is proposed to be knocked on the head, because in its foundation deed it is said the children are to be taught the principles of the Christian religion, by which it cannot be doubted was intended, and which has continuously been interpreted, to mean as held by the Church of England.

H.—Churchdown School, Gloucestershire.

A Scheme has been propounded by the Endowed Schools Commissioners for the future management of the Schools in this parish.

They consist of a day school, with house for a teacher and garden, also of another house for an infant school, under a mistress, with garden—and with it an endowment of £25 a-year to pay the teachers.

Now, the whole of it was left by a Churchman for Church education, and the will, dated 1753, specified that, if the Vicar chose to be master of the Boys' School, the Trustees *must* (not *may*) appoint him.

In the Scheme just published by the Commissioners the clause about the Vicar is cancelled. The £25 a-year is taken from the teachers, and they are to be dismissed.

I.—Bath Bluecoat School,

1711. Provided for education of children of poor householders, members of the Church of England. The Trustees are Churchmen; the children are of Church parentage, and are apprenticed to Churchmen.

It is feared an attempt will be made to throw open the Trust to Non-churchmen and to open the School to Dissenters, with all its advantages, though the funds have been raised by Churchmen with a special view to maintain and extend Church principles.

K.—Wells Blue School.

Ezekiel Barkham by his will desired that out of his endowment his Trustees should pay "An honest and religious schoolmaster conformable to the Church

of England, for teaching and instructing of so many of the poor children of the town of Wells and parish of St. Cuthbert in Wells, &c., until they shall be able to read, write, and cast accounts very well."

After his death his wife Margaret (by whose "counsel" and "assent" the trusts and uses were to be declared), in her feoffment in 1654, directs that "The schoolmaster shall read or say prayers to his scholars every morning and at their departing every evening." She also made "Lawes and ordinances to be observed and kept by the schoolmaster and schollars of the said School," in which, after repeating the injunction to read or say prayers morning and evening, she enjoins "that he (the schoolmaster) be very careful to educate the scholars committed to his charge in the principalls of Christian religion;" and, again, the scholars are enjoined and required "everie Lord's Day in the year, both forenoons and afternoons, diligentlie to resort unto the Church to hear Divine Service, and there soberlie to continue all the tyme of praying and preaching, and everie Lord's Day, in the afternoon, to be in the Parish Church of Saint Cuthberts, in Wells aforesaid, readie to be catechised and instructed in the grounds and principalls of Christian religion."

The Commissioners deny that this is a Church School under Clause 19, and have published a scheme destructive of its Church of England character.

The Committee have received a large number of returns respecting other School Endowments which claim—either from the terms of the Founder's will, from the earliest rules and constitutions of the School, from the fact that the Founders were Bishops, Clergy, or well-known Churchmen, from continuous use and occupation, or from decrees of the Court of Chancery—to be by every rule of justice, equity, and common sense Church of England endowments.

In these cases also the greatest alarm is expressed respecting the 'Schemes" of the Commissioners, which it is feared will be published under the Endowed Schools Act; but the Committee have thought it best to confine their statement in this Appendix to the Endowments with which the Commissioners have already actually interfered.

APPENDIX B, page 15.

On behalf of the Church Defence Institution, Counsel are requested to advise in consultation upon the following questions:—

1. Whether upon the true construction of the 17th section of "The Endowed Schools Act 1869," the effect of that section is to deprive or to require or empower the Commissioners to frame the Schemes therein mentioned in such manner as to deprive any clergyman of the Church of England of any right which prior to the Act he enjoyed to be an *ex-*

officio member of the governing body of any such educational endowment as is referred to in the section.

2. Or whether the Commissioners are only empowered or required to provide that the religious opinions of any person, or his attendance or non-attendance at any particular form of religious worship, shall not in any way disqualify him for being one of the governing body of such endowment, and generally to advise upon the Act in relation to the matters in question.

3. What would be the best way in which to raise these questions so as to obtain a judicial decision upon them ?

OPINION.

We are of opinion that the intent and object of the 17th Section of "The Endowed Schools Act 1869" is to protect members of the governing bodies of Endowed Schools from being disqualified on the ground of their religious opinions, in accordance with the recommendation made in the Report of the Schools Inquiry Commission, to which the Preamble of the Act refers (see p. 588), and that the section contains nothing which of itself can deprive any Clergyman of the Church of England of any pre-existing right or qualification.

The first question put to us must therefore be answered in the negative, and the second question in the affirmative.

With reference to the construction of the Act generally, we find nothing therein which requires the Commissioners to deprive Clergymen of their *ex-officio* qualifications to be members of the governing bodies of Endowed Schools.

The way in which to raise these questions, so as to obtain a judicial decision upon them, appears to us to be by Petition to the Privy Council, as indicated in Section 39 of the Act, but we think that this course could not be adopted where the Commissioners have a discretionary power, unless it were apparent on the face of the Scheme appealed against that they had proceeded merely upon an erroneous construction of the Act, and not in the exercise of their discretion.

ROUNDELL PALMER.
CECIL DALE.

Lincoln's Inn, December 15, 1871.

APPENDIX C, page 15.

Extracts from a Correspondence upon Paper S. between the Honorary Secretary of the Bath and Wells Diocesan Board of Education and H. J. Roby, Esq. and Lord Lyttelton.

From Rev. G. H. FAGAN.

"The Commissioners are correct in supposing that the Board was of opinion that the whole principle of Paper S. was faulty and liable to the charge of injustice, and a contravention of the two Acts in question.

"That principle I conceive to be as follows :—

"That since the passing of the Elementary Education Act in 1870 compulsory provision for maintenance by School Rate legally assured has been provided for every parish in England.

"That, by consequence, the circumstances under which the Endowed Schools Act were passed have changed.

"That endowments hitherto used in paying the 'Ordinary Expenses' of the Primary Schools of the country ought, as a general rule, no longer to be applied to the ordinary maintenance of our Parish Schools. The Commissioners consider that now that 'the legal provision has been made complete in amount' this argument 'acquires almost irresistible force.'

"That if Endowment is applied to the ordinary expenses it will simply relieve other sources of revenue, such as School Fees, Parliamentary Grants, Subscriptions, and Rates, to do which the Commissioners consider most objectionable.

"Therefore they deem that the permanent application of the existing endowments, applied to the ordinary expenses of our Primary Schools, should be in favour of Secondary Education, and at any rate, whatsoever improvements of such schools they may be devoted to, they ought to cease henceforth to assist their 'ordinary expenses,' or what is called their maintenance, inasmuch as Paper S contends 'that the surrounding circumstances have changed' by the passing of the Elementary Education Act of 1870, subsequently to the Endowed Schools Act of 1869.

"Now it is to the correctness of such a view and the justice of such a principle that we beg leave most emphatically to demur.

"The Elementary Education Act, we maintain, was not passed to make the legal provision for school-rate binding on every parish in England, so as to give any pretext for transferring existing endowments at present applicable to the ordinary expenses of Elementary Schools from such proper and legitimate object. On the contrary, the Act (Clause V.) expressly provides that '*in those cases only where efficient and suitable provision is not* OTHERWISE *made, and where there is an insufficient amount of such accommodation, in this Act referred to as public school accommodation*,' the deficiency shall be supplied in the manner provided by the Act. Moreover the manner of supplying such deficiency provided by this Act studiously and most carefully ensures that every opportunity shall be given by existing means, such as voluntary subscriptions, endowments, &c., for the supply for the deficiency without recourse to legal provision.

"To argue, therefore, as Paper S. does, that, because legal provision for Elementary Education is secure to every parish, it is not only permissible but a duty to forbid endowments to be applied to the ordinary expenses of our Parochial Schools, we hold to be in opposition to the spirit and provisions of both the Acts referred to.

"I beg also to call the attention of the Commissioners to the accompanying extract from a speech of the Lord Bishop of London, reported to have been delivered at the annual meeting of the National Society, held June 22nd, 1871:

> "'They were told in a paper now in circulation that it was intended to take away all endowments for the common education of the primary schools and only to allow such endowment to go to the superfluities of a higher class of schools, and that they were not to be applied to the maintenance of the poorer schools. Now the possibility of those schools being maintained did often depend upon those endowments, and if they were taken away, and the responsibility of maintaining those schools were left in the care of a few farmers, these schools would be ruined altogether, and they would soon be driven into the hands of the School Board.'"

From H. J. ROBY, Esq.

"2.—The Commissioners do not object to your statement of their principles, as far as it goes. But it is imperfect in omitting the cardinal point of all: viz.—the duty laid upon the Commissioners in the terms of the Act to make Endow-

ments as conducive as they can be made to the advancement of the education of the boys and girls.

"3.—This obligation, laid on the Commissioners, would probably have made it necessary for them, if the Elementary Education Act had not been passed, to lay down the principle that Endowments cannot, as a rule, advantageously be used to defray the ordinary expenses of an Elementary School, for it is certainly not most conducive to education to apply funds to objects which can be provided for from other sources. It is shown in paper S that the passing of the Elementary Education Act has greatly strengthened the position, because there is now not only ample legal provision for Elementary Education, but that provision is associated with a system which secures, by various checks and guarantees, the efficiency of the Schools. To reserve Endowments therefore for ordinary expenses, is not only to relieve other sources of supply, but to do so at the risk of injury to the Schools through the removal of important tests of efficiency and incentives to exertion.

"7. With respect to the Elementary Education Act, you rest your opinion on a reading of that Act, which the Commissioners cannot follow. You say that 'the manner of supplying such deficiency provided by the Act studiously and most carefully ensures that every opportunity shall be given by existing means, such as voluntary subscriptions, endowments, &c., to the supply of the deficiency without recourse to legal provisions.' Now, unless the Commissioners mistake, Endowments are only mentioned twice in the Act. By section 93, certain Endowments may, under divers restrictions, and with the consent of the Education Department, be transferred to School Boards, to be treated by them as part of their ordinary resources. And section 75 provides that some small Endowments, excepted from the Endowed Schools Act 1869, may be the subject of schemes by that department. The Code of 1871 is silent about Endowments. To the understanding of the Commissioners, such provisions, so far from indicating an intention to treat endowments as *ejusdem generis*, with other supplies of funds, show an intention to place them on a different and very special footing.

"8. The 5th section, to which you appear to refer, contains no such enumeration of resources as you suggest. The word 'otherwise' is general, and must be construed in the light of other provisions bearing on the question. And here the Commissioners must request the Board's candid consideration of the force of this word in this place. The construction put by the Board upon it would carry this consequence, that the Elementary Education Act intended, by this single expression, to secure for ever for Primary Schools, which happen to have the advantage of an Endowment, the benefit of that Endowment, and this notwithstanding the enactment passed only one year previously, placing all such Endowments (with some specified exceptions) under the control of the Endowed Schools Commissioners, to be applied as might be most conducive to Education generally. The Commissioners believe that Parliament never intended so to restrain their action, but that it is still their duty to deal with these Endowments as with others, for the purpose indicated by the Endowed Schools Act."

From Rev. G. H. FAGAN.

"6. The question in its broad aspects (and it is in these that a Diocesan Board of Education naturally views them) comes to this. Should Endowments be employed as nearly as possible according to the original mind of the Donor for the advantage of the particular place or parish which he designed to benefit, and without which design on his part the endowment never would have been bequeathed at all to the public?

"If a Founder designed that all classes of a given parish should be benefited, not only religiously and intellectually, but also pecuniarily, by the existence of an Endowment for a School for the poor, we conceive that it is 'unjust' to that

particular parish to deprive it of all or any of these advantages. Your letter asks 'Who is the person injured?' The reply is—everyone who is needlessly deprived of such benefits; the *poor*, to whom a fixed and settled provision for the education (often specially the religious education, and on lower terms than they could otherwise procure it) of their children is taken away, and also *the other class of inhabitants*, who in very large numbers of cases are in no sense 'the rich,' who have to bear a portion of the cost, whether legal or voluntary, of providing education, not only for their own children, but for those of their poorer neighbours.

"7. Nor will I omit the consideration, which in many cases would far outbalance all others, that in the altered circumstances of Elementary Education the prohibition to assist the ordinary expenses of a School out of its Endowment would practically just make the difference between the substitution of a School of that religious character most desired by the parents, for a creedless, possibly a merely secular, School, repugnant to their most sacred principles and feelings—a result which, in such instances, would hardly fall short of the character of religious persecution."

RESOLUTIONS TO BE PROPOSED WHEN THIS REPORT IS CONSIDERED.

1. That this House concurs in the judgment expressed in this Report, that the religious educational endowments of the Church of England are exposed to great peril under the operation of the Endowed Schools Act, and agrees with the main suggestions numbered from 1 to 7, see pages 17, 18.

2. That this Report be presented to the Upper House, and that His Grace the President and their Lordships the Bishops be respectfully requested to watch the "Schemes" of the Endowed Schools Commissioners as they are severally published, specially in their bearing upon religious education, and also carefully to consider what future legislation may, on the expiration of the present Act, be devised for the safeguard, improvement, and extension of our Church of England Endowed Schools.